BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 1999-469-C - ORDER NO. 2000-0272

MARCH 20, 2000

IN RE:	Proceeding to Review BellSouth Telecommunications, Inc.'s Guidelines for)	ORDER RULING ON MOTIONS TO STRIKE
	Alternate Form of Regulation.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Motions to Strike testimony in this BellSouth Telecommunications, Inc. (BellSouth) "guidelines" case. The parties involved have filed several responsive documents to the Motion.

First, BellSouth has moved to strike the testimony of Gregory J. Tate, a witness for AT&T Communications of the Southern States, Inc. (AT&T). BellSouth states that the present Docket was established to review BellSouth's proposed guidelines for use in the complaint process established by S.C. Code Ann. Section 58-9-576 (B)(5) (Supp.1999), but that Tate's testimony does not address these proposed guidelines. BellSouth notes that Tate's testimony is devoted entirely to a discussion of BellSouth's switched access service rates. BellSouth therefore moves to strike the testimony as irrelevant, immaterial, and beyond the scope of this docket. AT&T responds by stating that it would be an efficient use of this Commission's time to address an allegation that BellSouth's switched access rates are discriminatory between similarly situated customers in the present Docket. BellSouth responds by stating that a Motion to Strike is

within the Commission's discretion, and Tate's testimony should be stricken, since it is unrelated to the stated purpose of this Docket.

We agree with BellSouth. It is clear to us that Tate's testimony is totally unrelated to the stated purpose of this Docket, which is to examine "guidelines" under S.C. Code Section 58-9-576 (Supp.1999). We therefore hold that Tate's testimony is irrelevant, and grant BellSouth's Motion to Strike.

Also, AT&T has moved to strike certain portions of the direct and rebuttal testimony of BellSouth's witness Alphonso Varner. AT&T alleges that Varner's testimony is simply a recitation of his interpretation of statutory provisions including a "deducement of legislative intent without reference to any source of information other than the plain language of the statute." AT&T further states that Varner's testimony is at best legal argument which should be left to counsel. Lastly, AT&T argues that Varner is expressing an opinion on the ultimate issue, which he is not allowed to do under the South Carolina Rules of Evidence. BellSouth has responded to the Motion by noting that Varner says at the beginning of his testimony that he is not a lawyer, but that he has years of regulatory experience and is qualified accordingly to express the opinions that he does in this case. Further, BellSouth notes that South Carolina Rule of Evidence 704 allows opinions to be expressed on the "ultimate issue" in the case. BellSouth also states that, at most, AT&T is attacking the weight to be given Varner's testimony, and by implication, not its admissibility. BellSouth further states that this Commission can judge Varner's credibility, and afford that testimony whatever weight this Commission deems appropriate.

Again, we agree with BellSouth. We believe that AT&T's objections go the weight rather than the admissibility of Varner's testimony. Varner readily admits that he is not an attorney, but he also states that he has years of regulatory experience that allow him to form his opinions in this case. We agree with BellSouth's response in this matter, and believe that we can judge Varner's credibility and give his testimony whatever weight we deem appropriate in our deliberations in this case. Further Rule 704, SCRE allows Varner to state his opinion, even if it encompasses an "ultimate issue." AT&T's Motion to Strike is denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

bigo T. Brusley

ATTEST:

Executive prector

(SEAL)